

Message Text

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PASS TREASURY

E.O. 11652: N/A

TAGS: EFIN, ID

SUBJ: INCOME TAX CONVENTION

REFS: A) STATE 240722 B) STATE 205987

SUMMARY: GOI/USG DIFFERENCES IN TAX CONVENTION TEXT NOW
NARROWED TO LANGUAGE DESCRIBING RIGHTS OVER CONTINENTAL SHELF
AND DEFINING INDONESIA, BOTH IN ARTICLE 3 OF DRAFT
CONVENTION. REQUEST GUIDANCE FOR RESPONDING TO THEIR
CURRENT POSITION. END SUMMARY

A. IN ABSENCE HEAD OF GOI TAX CONVENTION NEGOTIATING TEAM
SUTANTO, HAVE RECEIVED WRITTEN MESSAGE FROM
DEPLU LIAISON MAN (MARDANUS) ADDRESSING OUTSTANDING
ISSUES INDONESIAN - US CONVENTION. AS ALL THESE QUESTIONS
FALL WITHIN HIS MINISTRY'S COMPETENCE IT IS LIKELY THIS
MESSAGE REPRESENTS AUTHENTIC READING GOI POSITION.

REACTION TO POINTS RAISED REF A FOLLOW:

A1. INDONESIAN HAVE WITHDRAWN OBJECTION TO USE OF
TERM "CONVENTION".

A2. THEY AGREE ENGLISH TERMS FOR INDONESIAN TAXES
MENTIONED ARTICLE 2 MAY PRECED, WITH INDONESIAN
LANGUAGE TERMS FOLLOWING IN PARENTHESES.

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A3. LANGUAGE DESCRIBING CONTINENTAL SHELF QUESTION

ADDRESSED IN THESE TERMS:

" DURING NEGOTIATION BOTH DELEGATIONS REACHED UNDERSTANDING THAT WORDS 'SOVEREIGN RIGHTS' IN....SUBPARAGRAPHS (1) (A) (II) AND (1) (B) (II) OF ARTICLE 3 MEAN: RIGHTS OF BOTH CONTRACTING STATES TO EXPLORE AND EXPLOIT NATURAL RESOURCES OF THE SEA-BED AND SUB-SOIL UNDER THEIR ADJACENT SEAS. NEVERTHELESS TO AVOID MISINTERPRETATION...DELEGATIONS AGREED TO CONFIRM THIS UNDERSTANDING IN THE PROTOCOL.... TO OUR MIND USE OF WORDS 'SOVEREIGN RIGHTS' IS STILL PREFERABLE TO 'EXCLUSIVE RIGHTS' SINCE THIS IS IN LINE WITH ARTICLE 2 GENEVA CONVENTION OF 1958 ON THE CONTINENTAL SHELF, READING AS FOLLOWS: 'COASTAL STATE EXERCISES SOVEREIGN RIGHTS OVER CONTINENTAL SHELF FOR PURPOSE OF EXPLORATION AND EXPLOITATION OF NATURAL RESOURCES'."

A4. MESSAGE CLINGS TO CONTENTION THE U.S. NEGOTIATORS AGREED IN JAKARTA TO OMIT "REPUBLIC OF INDONESIA" FROM DEFINITION OF INDONESIA ARTICLE 3 (1) (B), AND DEFENDS OMISSION AS FOLLOWS:
"WITH RESPECT TO ARTICLE 3, USDEL AGREED TO DEFINE 'THE TERM INDONESIA' AS IN TAX AGREEMENT BETWEEN INDONESIA AND THE NETHERLANDS, PROVIDED HOWEVER, THAT THE FORMULATION OF SAID TERM IS DIVIDED INTO TWO PARTS CONSISTING OF:
'THE TERRITORY' IN THE FIRST AND 'THE SEABED AND SUBSOIL' IN THE SECOND PART RESPECTIVELY.
IN THE ABOVE-SAID AGREEMENT OF USDEL THE WORDS 'MEANS THE REPUBLIC OF INDONESIA' WERE NOT MENTIONED. I FEEL THAT THE ABSENCE OF THOSE WORDS IN ARTICLE 3 WILL NOT CREATE ANY DIFFICULTY, SINCE UNDERTAKINGS OF THE TAX AGREEMENT ARE ALREADY DISTINCTIVELY MENTIONED IN THE PREAMBLE, WHILE PROVISION OF 'THE TERM INDONESIA' IN ARTICLE 3 IS MAINLY MEANT TO DEFINE THE AREA OR PLACE WHERE GOVERNMENT OF....INDONESIA IS AUTHORISED TO LEVY TAX TO A PERSON, PROPERTY OR ACTIVITY IN CONNECTION WITH THE APPLICATION OF THE TAX AGREEMENT."

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A5. INDONESIANS AGREE TO USE THE EXPRESSION "SHALL BE SUBJECT TO RATIFICATION" RATHER THAN "SHALL BE RATIFIED" IN ARTICLE 30.

B. INDONESIAN HAVE ACCEPTED ANOTHER STYLE CHANGE RECOMMENDED REF B SO THAT PREAMBLE READS: "THE UNITED STATES OF AMERICA AND THE REPUBLIC OF INDONESIA, DESIRING...HAVE AGREED AS FOLLOWS."

C. ACTION REQUESTED: WOULD APPRECIATE FAIRLY DETAILED
GUIDANCE FOR RESPONDING TO INDONESIAN ARGUMENTS ADVANCED
PARAS A3 AND A4 ABOVE. ALTHOUGH SUBMISSION OF WRITTEN ARGUMENT
OPPOSING OUR LOS PROPOSAL IS ON THE FACE OF IT DISCOURAGING,
WE NOTE SLIGHTLY TENTATIVE AIR IN LANGUAGE
QUOTED PARA A3, AND HOPE INDONESIAN MAY ULTIMAELY RESPOND
TO ARGUMENTS FRAMED TO TAKE ACCOUNT OF SPECIFIC CONCERNS
THEY HAVE EXPRESSED. ON OTHER HAND WE FIND ARGUMENT
ADVANCED PARA A4 REASONABLY APPEALING. IS USG IN A POSITION
YIELD TO INDONESIAN WISHES ON THAT ONE IF IN FACT INTENT OF
CONVENTION IS NOT INFRINGED?
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